

## APPEAL NO. 001033

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 19, 2000. The hearing officer determined that the respondent (claimant) is entitled to supplemental income benefits (SIBs) for the 11th compensable quarter. The appellant (carrier) appealed the determination that claimant had no ability to work and is entitled to SIBs. Claimant responded that the hearing officer did not err in making her determinations.

### DECISION

We affirm.

Carrier contends the hearing officer erred in determining that claimant had no ability to work during the qualifying period for the 11th quarter and that he is entitled to SIBs. Carrier asserts that: (1) on his Application for [SIBs] (TWCC-52), claimant answered "yes," regarding whether he could work; (2) Dr. D stated that claimant should be able to work "from an orthopedic standpoint"; (3) Dr. KI stated only that claimant would have "difficulty" with employment; (4) claimant did not provide a narrative establishing that he had no ability to work at all; (5) Dr. DI said claimant could go back to work "immediately"; (6) other records, from Dr. D and Dr. DI, show that claimant could work; and (7) because claimant made only two job contacts, he is not entitled to SIBs.

The criteria for entitlement to SIBs are set forth in Sections 408.142(a) and 408.143. The law regarding SIBs, good faith, and an assertion that there was no ability to work at all during the qualifying periods is discussed in Texas Workers' Compensation Commission Appeal No. 000004, decided February 15, 2000. The version of Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(3) (Rule 130.102(d)(3)) then in effect provided that an employee may be in good faith if the employee:

has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The Appeals Panel's standard of review in this case is also set forth in Appeal No. 000004.

The hearing officer summarized the background facts in her decision. Briefly, claimant sustained a compensable injury in \_\_\_\_\_ and, since that time, has undergone two lumbar disc surgeries. The parties stipulated that: (1) claimant sustained a compensable low back injury on \_\_\_\_\_; (2) claimant did not commute any of his impairment income benefits; and (3) the qualifying period for the 11th quarter was from September 26, 1999, to December 26, 1999.

The direct result determination in claimant's favor was not appealed. The hearing officer determined that claimant established that he had no ability to work and that he is entitled to 11th quarter SIBs. Claimant had the burden to prove that he had no ability to work. Texas Workers' Compensation Commission Appeal No. 950582, decided May 25, 1995. The hearing officer was the sole judge of the credibility of the evidence and she judged the credibility of the medical evidence regarding whether claimant had an ability to work during the qualifying period. The hearing officer found that claimant met his burden to establish an inability to work. In October 1999, Dr. KI stated that: (1) claimant has "failed back syndrome"; (2) claimant's range of motion is significantly limited and he walks with a cane; (3) claimant has had epidural steroid injections and a pain pump; and (4) he has moved to another state so that a family member may help care for him. Dr. KI said that claimant has been unable to work since his disc surgeries and that he did not see any change in claimant's condition that would allow him to return to work.

The hearing officer judged the credibility of all the medical evidence and made her determinations regarding claimant's ability to work based on the evidence before her. Because the hearing officer determined that claimant was unable to work, the hearing officer did not err in determining that claimant met the good faith SIBs criterion and that he is entitled to SIBs. The hearing officer's determinations in this regard are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we will not substitute our judgment for hers. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

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Judy L. Stephens  
Appeals Judge

CONCUR:

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Robert W. Potts  
Appeals Judge

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Dorian E. Ramirez  
Appeals Judge